

Significant changes to the Romanian energy legislation



On 29 March 2024, *Emergency Ordinance No 32/2024 for the amendment and supplementation of Emergency Ordinance No 27/2022 on measures applicable between 1 April 2022 and 31 March 2023 to end customers in the electricity and natural gas market*, as well as for the amendment and supplementation of certain regulatory acts in the energy field and the adoption of certain measures in the energy field (“**GEO 32/2024**”) was published in the *Official Gazette*.

The new amendments mainly cover the energy crisis measures in force, contraventions and penalties in the energy field, the repealing of certain taxes applicable to prosumers and the introduction of general provisions on contracts for difference.

Most of GEO 32/2024 provisions entered into force upon its publication in the *Official Gazette*, except for the provisions on contraventions and penalties which shall come into effect 30 days after their publication in the *Official Gazette*.

Below is a summary of the main changes brought by GEO 32/2024.

a) **Amendment of certain measures enacted in the context of the energy crisis**

(i) *Final invoiced price*

• Electricity/natural gas suppliers are required to break down the end-customer price not only in the standard supply offers but also in the supply contracts concluded with end-customers into the following components: (i) the electricity/natural gas price, which includes the electricity/natural gas purchase component (including the transmission tariff - the component for feeding electricity/natural gas into the grid/system, the warehousing cost, where applicable, and the supply component; (ii) the grid/system component established on the basis of regulated tariffs for grid/system services (distribution, transmission, system service) and (iii) charges, taxes, contributions established in accordance with the legal provisions in force.

• Between 1 April 2024 and 31 March 2025, the supply component will be RON 73/MWh for electricity supply activities (identical to the previous threshold) and RON 15/MWh for gas supply activities (against the previous threshold of RON 12/MWh). By exception, the supply component of the prices charged to customers in last resort regime is RON 80/MWh for electricity supply (identical to the previous threshold) and

RON 15/MWh for gas supply (compared to the previous threshold of RON 13.5/MWh).

• Also, between 1 April 2024 and 31 March 2025, the final price for end customers will include the contribution related to the support scheme for the promotion of high-efficiency cogeneration based on useful heat demand and the value of green certificates related to the scheme for the promotion of energy production from renewable sources.

(ii) *Compensations paid to suppliers*

Pursuant to the amendments brought to GEO 119/2022, as from 1 April 2024, the maximum value of the weighted average price of electricity used by ANRE to calculate the amounts to be paid from the state budget for electricity suppliers is RON 700/MWh. Previously, the threshold was RON 900/MWh, which will continue to apply up to 1 April 2024.

(iii) *Reference price for determining the contribution to the Energy Transition Fund*

• The reference price considered for the calculation of the contribution to the energy transition fund (the “**Contribution**”) owed by electricity producers for production activities will be reduced from RON 450/MWh to RON 400/MWh.

• The reference price of RON 400/MWh will also be applied for the calculation of the Contribution subject to withholding from the income of resident/non-resident entities generated under hedging contracts.

• Also, the reference price considered for the calculation of the Contribution owed by other market participants (e.g. electricity and gas traders, electricity/natural gas suppliers engaged in trading activities, etc.) will be the average purchase price of electricity/natural gas plus a profit mark-up of 10% (as opposed to the previous mark-up of 2%).

(iv) *Centralised Electricity Procurement Mechanism (MACEE)*

• The duration of the MACEE has been reduced until 31 December 2024 (as opposed to 31 December 2025 under the previous legislation). After this date, participation in the MACEE will be voluntary.

• Also, starting from 1 April 2024, OPCOM, as the sole purchaser within the MACEE, will purchase electricity at a price of RON 400/MWh (compared to the previous price of RON 450/MWh).

• A mechanism is provided whereby electricity suppliers purchasing electricity through the MACEE can benefit from guarantees of origin for the quantities of renewable electricity traded. Thus, electricity suppliers participating in the MACEE may request the transfer of guarantees of origin for 90% of the quantities determined in line with the provisions of GEO 27/2022, in compliance with the provisions of the Regulation on the issuance and monitoring of guarantees of origin for electricity produced from renewable energy sources, approved under Government Decision No 1232/2011.

b) Contraventions and penalties in the energy sector

GEO 32/2024 brings some amendments to Electricity and Natural Gas Law No. 123/2012 (“**Energy Law**”) regarding the regime of contraventions and penalties in the electricity and natural gas field, which shall enter into

force 30 days after the publication of GEO 32/2024 in the Official Gazette.

(i) *Statute of limitations*

- With regard to the 36-month statute of limitations for certain categories of contraventions (as an exception to the general 24-month period under the Energy Law), it is further stipulated that in the case of continuous contraventions, the statute of limitations shall run as from the cessation of the last material act constituting the contravention.
- In addition, the statute of limitations of ANRE's right to impose sanctions shall be interrupted by the communication of the decision to carry out the investigation and/or of any act issued in connection with the investigation, communicated to the investigated economic operator. In this case, the statute of limitations of ANRE's right to impose sanctions shall expire at the latest on the date when the period equal to twice the statute of limitations applicable to the infringement in question expires.

(ii) *Increase in the amount of certain penalties*

- In the electricity sector, while the penalties for certain contraventions were previously calculated by reference to the annual turnover of sales on the wholesale energy market in the financial year prior to the sanction, they will now be established by reference to the annual turnover of the offending legal entity generated from the licensed activity in the financial year prior to the sanction. Thus, these changes have aligned the penalties for certain contraventions to the definition of turnover¹.
- In addition, for some contraventions, the fine has been increased from 0.5% - 1% of the annual turnover of sales on the competitive energy market to 1% - 3% of the annual turnover of the offending legal entity generated from the licensed activity (in the financial year preceding the sanction). These contraventions relate to the refusal of wholesale electricity market participants to allow investigations and/or unannounced inspection actions to be carried out, as well as their failure to provide data and information, the provision of inaccurate, incomplete or misleading data and information, following ANRE's requests in connection with such investigations.
- In the natural gas sector, the fine of RON 100,000 - RON 500,000 for some contraventions has been increased to a fine of 1% - 5% of the annual turnover from the licensed activity in the financial year preceding the sanction. These contraventions include (i) failure to comply with the transparency requirements laid down in ANRE regulations, as well as in European regulations other than Regulation (EU) No 1227/2011 (REMIT Regulation), (ii) failure to comply with the regulations on legal and/or accounting unbundling of regulated activities in the natural gas sector; and (iii) unjustified denial of access/connection of applicants to upstream supply pipelines, transmission system, distribution system or natural gas storage facilities.

c) Charges applicable to prosumers

GEO 32/2024 repealed Art. 21 para. (3) of *Government Emergency Ordinance No 163/2022 for supplementing the legal framework for the promotion of the use of energy from renewable sources and for the amendment and supplementation of certain regulatory acts* ("GEO 163/2022"), which regulated the possibility for central government authorities and ANRE to apply, in certain cases, taxes and tariffs to renewable energy prosumers for their self-produced electricity from renewable sources remaining on their premises. The cases triggering the application of charges and tariffs under GEO 163/2022, now repealed, were as follows:

• if self-generated renewable electricity is effectively supported through support schemes, only to the extent that the economic viability of the project and the incentive effect of such support are not undermined;

starting from 1 December 2026, if the installed capacity in prosumers' power plants exceeds 8% of the total installed capacity in electricity generation capacities at national level and if it is proven by means of a cost-benefit analysis carried out by ANRE through an open, transparent and participatory process, that the exemption from charges and tariffs has either resulted in a significant disproportionate burden on the long-term financial sustainability of the electricity system or creates an incentive that goes beyond what is objectively necessary to achieve cost-effective use of energy from renewable sources, and that such burden or incentive could not be minimised by taking other reasonable actions; or

• if the self-generated electricity from renewable energy sources is produced in installations with a total installed capacity of electricity exceeding 30 kW.

It should be noted that these provisions have transposed into national law the provisions of Article 21 para. (3) of *Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources*. The explanatory memorandum to GEO 32/2024 states that, at the request of the Romanian authorities, the European Commission has issued a view that a Member State's decision not to transpose an optional provision of a directive cannot be considered a failure to comply with the transposition obligation.

d) Contracts for Difference (CfD)

According to GEO 32/2024, the Romanian Government is to approve, at the proposal of the Ministry of Energy, the general framework for the implementation and operation of the CfD support mechanism for low carbon technologies. The financing of the CfD support mechanism for eligible electricity generation technologies will be carried out in compliance with national and European rules on state aid and/or the provisions of the European Commission's authorisation decisions and will be provided from non-reimbursable European funds, through the payment of a contribution applied to the electricity end customers, and to the extent necessary, the Ministry of Energy shall ensure financing from the state budget.

In this regard, it should be noted that on 14 March 2024, the Government published for public consultation the *Draft Government Decision on the approval of the general framework for the implementation and operation of the Contracts for Difference support mechanism for low carbon technologies*². Also, on 6 March 2024, the European Commission approved the €3 billion CfD scheme to support onshore wind and solar PV installations to stimulate the transition to a net zero economy³.

e) Other important amendments

(i) Obligations relating to the securing of electricity/natural gas for consumption by end customers

The electricity suppliers shall have to secure at least 50% (as opposed to the 40% threshold prior to the amendments) of the electricity necessary to cover the consumption of the end customers in their portfolio, from their own generation capacities or by forward contracts on electricity markets other than day-ahead market (PZU), intra-day market (PI) and balancing market (PE). Failure to comply with this obligation is now a contravention,

subject to a fine ranging between 5% and 10% of annual turnover.

A similar obligation has been imposed on natural gas suppliers, who must ensure at least 50% of the natural gas necessary to cover the consumption of the end customers in their portfolio, either from their own generation capacities or through the purchase of gas under forward contracts. Failure to comply with this obligation is considered a contravention, subject to a fine ranging between RON 500,000 and RON 1,000,000.

(ii) *Imbalances of prosumers with capacities below 400 kW*

In the case of prosumers owning renewable electricity plants with installed electrical capacities of less than 400 kW per consumption place, electricity suppliers shall not bill, for the production and consumption place in question, the countervalue of imbalances related to both electricity consumed and electricity produced and delivered to the electricity grid. These provisions have been added in the context of the existing provisions according to which the balancing responsibility does not apply to prosumers with an installed capacity of less than 400 kW, the responsibility for balancing belonging to their suppliers.

(iii) *Price of natural gas sales by producers carrying out both onshore and/or offshore extraction and natural gas sales activities*

Between 1 April 2024 and 31 December 2024, natural gas producers carrying out both onshore and/or offshore extraction activities (regardless of the commencement date of such activity) and natural gas sales activities, shall be required to deliver at a price of RON 120/MWh (as opposed to the previous price of RON 150/MWh) the necessary quantities of natural gas resulting from the current domestic production activity to the suppliers of household customers, in order to ensure between 1 April 2024 and 31 March 2025 the consumption needs of household customers from the current production and from the underground storage of natural gas, as well as the necessary natural gas for securing the minimum necessary stock for the period between 1 November 2024 and 31 March 2025.

(iv) *Procurement of system services by the TSO*

Regarding TSO's acquisition of non-frequency system services from market participants on the basis of transparent, non-discriminatory, and market-based procedures, GEO 32/2024 repealed the provisions allowing TSO to request an exemption from ANRE on the grounds that the market provision of such services would not be economically sufficient.

It has also been regulated that the procedures for procuring system services that are not aimed at reaching a frequency stability shall be based on a maximum price set under conditions of economic efficiency in line with ANRE regulations. If, following the procedure for the purchase of these services, there is no bidder, at TSO's request, justified by the need to maintain the system's operational reliability, ANRE may decide that, for a limited period of not more than one year, the TSO will be entitled to request, through a dispatcher's order, the provision of the service in question, at the maximum price laid down in the procedures, by an economic operator technically capable of providing the system service in question. This period may be extended following a new procurement procedure carried out by the TSO, for which there is no bidder.

1. Annual turnover means the turnover of the offending legal entity from the licensed activity in the financial year preceding the sanctioning of the offence. If, in the financial year preceding the sanction, the legal entity has not recorded a turnover or if this cannot be determined, the turnover for the financial year in which the offender recorded a turnover, immediately preceding the reference year, shall be considered for calculating the turnover for the purposes of applying the sanction. If the offender did not generate any turnover in the year preceding the reference year for calculating the turnover for the purposes of

applying the penalty, the last turnover recorded shall be considered. If the offender is a newly established legal entity, which has not registered a turnover in the year preceding the sanction, it will be sanctioned with a fine ranging between RON 100,000 and RON 1,000,000.

2. <https://energie.gov.ro/proiectul-de-hotarare-a-guvernului-privind- aprobarea-cadrului-general-pentru- implementarea-si-functionarea-mecanismului-de-srijin-prin-contracte-pentru-diferenta-pentru-tehnologiile-cu-emisii-reduce/>.

3. <https://competition-cases.ec.europa.eu/cases/SA.108510>.